In the Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-636

CARMINE LOMBARDOZZI, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

On March 12, 1969, during trial, petitioner pleaded guilty in the United States District Court for the Eastern District of New York to having conspired to transport a stolen check in interstate commerce in violation of 18 U.S.C. 2314 and 371. Before sentencing he moved to withdraw his plea of guilty "on the ground that he was not guilty of the crime to which he had pleaded and that his plea was involuntary because the government attorney had assured him that the court would recommend a concurrent sentence to the Attorney General and that he would not have to serve any time in

a federal penitentiary." *United States* v. *Lombardozzi*, 436 F. 2d 878, 880 (C.A. 2), certiorari denied, 402 U.S. 908. After an extensive hearing the court denied the motion and sentenced petitioner to two years' imprisonment, subject to the parole eligibility provision of 18 U.S.C. 4208(a)(2). The court of appeals affirmed, *United States* v. *Lombardozzi, supra,* and this Court denied certiorari, 402 U.S. 908.

Petitioner subsequently renewed his motion to withdraw the plea and in the alternative moved to vacate his sentence pursuant to 28 U.S.C. 2255, on the ground that his plea had been made in reliance on an unfulfilled promise by an F.B.I. agent that his sentence would be served concurrently with a sentence to be imposed on an unrelated state perjury conviction, citing this Court's intervening decision in *Santobello* v. *New York*, 404 U.S. 257. The district court denied the motion, finding that there had been no such promise. The court of appeals affirmed (Pet. App. A-1–A-8).

We rely on that opinion in urging that the petition for a writ of certiorari should be denied.

Respectfully submitted.

ERWIN N. GRISWOLD,
Solicitor General.

DECEMBER 1972.

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